



FEDERAL HOUSING FINANCE AGENCY

12 CFR Chapter XII

[No. 2023-N-5]

Notice of Regulatory Review

AGENCY: Federal Housing Finance Agency.

ACTION: Regulatory review; request for comment.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a notice of a regulatory review to be conducted in accordance with the process set forth in its Regulatory Review Plan published in February 2012, and is requesting comments on how its regulations may be made more effective and less burdensome.

DATES: Comments on this notice of regulatory review must be received no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments, identified by “Regulatory Review [No. 2023-N-5]”, by any of the following methods:

- *Agency website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Please include “Regulatory Review [No. 2023-N-5]” in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/“Regulatory Review [No. 2023-N-5],” Federal Housing Finance Agency, 400 Seventh Street, SW., Washington,

DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:*

The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/Regulatory Review [No. 2023-N-5], Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Ellen S. Bailey, Managing Associate General Counsel, ellen.bailey@fhfa.gov, (202) 649-3056; or Chris Bederka, Counsel, christopher.bederka@fhfa.gov, (202) 649-3796, Federal Housing Finance Agency, Constitution Center, (OGC) Fourth Floor, 400 Seventh Street SW., Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

Comments

All comments received will be posted without change and will include any personal information provided, such as your name, address, email address, and telephone numbers, on the FHFA website at <https://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic docket for this Notice also located on the FHFA website.

I. Background; FHFA's Regulatory Review Plan

FHFA was established by the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, to supervise and regulate the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the

Enterprises), any affiliate of either Enterprise, the Federal Home Loan Banks (the Banks), and the Office of Finance of the Federal Home Loan Bank System (OF). In 2012, FHFA developed its Regulatory Review Plan (Review Plan) after considering principles set forth in Executive Order 13579, “Regulation and Independent Regulatory Agencies” (July 11, 2011).¹ Executive Order 13579 requested—but did not require—independent regulatory agencies, such as FHFA, to develop, release to the public, and implement a plan for the periodic review of their existing significant regulations to determine whether any regulation should be modified, streamlined, expanded, or repealed to make the agency’s regulatory program more effective or less burdensome in achieving its objectives.

Under its Review Plan, FHFA reviews its regulations at least every five years, except for those regulations that were adopted or substantially amended within the two years prior to issuance of a Notice of Regulatory Review and rules of agency organization, procedure, or practice. The Review Plan suggests factors that commenters should consider in order to assist FHFA with its regulatory review, including factors related to legal, regulatory, or market developments, regulatory overlap, less burdensome alternatives, and clarity of regulatory requirements.

II. Results of the 2018 Regulatory Review

FHFA’s most recent regulatory review was initiated in April 2018, by a Notice of Regulatory Review and request for comments and considered 52 regulations. FHFA received 11 total comment letters from trade associations, a research center associated with a major university, an insured depository institution, a credit union, and the Federal Home Loan Banks. FHFA also conducted an internal review of its regulations that were

¹ 77 FR 10351 (Feb. 22, 2012) (FHFA Regulatory Review Plan); *see also* 76 FR 41585 (July 14, 2011) (E.O. 13579).

subject to the five-year Review Plan, seeking staff input on the same questions on which the Review Notice sought public comment.

FHFA evaluated all comments received and determined that some amendments were warranted. In response to amendments to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, 124 Stat. 1376), and as requested by commenters, FHFA amended 12 CFR part 1238 to remove the stress testing requirements for the Banks.² Additionally, FHFA undertook a comprehensive amendment of its regulation on prior approval of Enterprise products, 12 CFR part 1253. In some cases, FHFA determined that a suggestion should be considered when the underlying regulation was otherwise being amended by FHFA. In other cases, FHFA determined that an amendment was not necessary because, for example, the comment requested a clarification that could effectively be provided through another means (such as an interpretation or guidance).

III. FHFA's 2023 Regulatory Review; Request for Comment

Consistent with its Review Plan, FHFA's next regulatory review must begin not later than five years after its prior review, or in April 2023. All current regulations—except, as noted, rules of agency organization, procedure, or practice, or regulations adopted or substantially amended since April 2021 (meaning, within the past two years)—are subject to review. If members of the public comment on recently adopted or amended regulations, FHFA may consider those comments, as it deems appropriate. FHFA does not anticipate responding to individual comments.

Regulations administered by FHFA are published in chapter XII of title 12 of the Code of Federal Regulations, except for two regulations of predecessor agencies which

² 85 FR 16528 (Mar. 24, 2020) (Stress Testing of Regulated Entities)

FHFA has not yet moved.³ FHFA's regulations are also posted on the FHFA website at <https://www.fhfa.gov>.

FHFA hereby requests comment on its regulations for purposes of improving their effectiveness and reducing their burden. Factors that FHFA's Review Plan identifies as relevant to the review, and which FHFA suggests should guide commenters, are:

- (1) Legal or regulatory developments—including new laws, executive orders, or judicial decisions that have been adopted since the promulgation of a regulation—that make a regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;
- (2) Marketplace developments, technological evolution, and related changes that may have rendered a regulation, in whole or in part, inefficient, outmoded, or outdated;
- (3) The extent to which provisions of the regulation are written in plain language or need clarification;
- (4) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would facilitate compliance by Fannie Mae, Freddie Mac, any affiliate of either Enterprise, the Banks, or OF with the regulation, or would improve supervision by FHFA of Fannie Mae, Freddie Mac, any affiliate of either Enterprise, the Banks, or OF; and
- (5) Demonstration of a better alternative method to effect a regulatory purpose or requirement, supported by compelling evidence of significantly less

³ These are a regulation of the former Office of Federal Housing Enterprise Oversight on Prompt Corrective Action related to the Enterprises, at 12 CFR part 1777, which FHFA has suspended due to the Enterprise conservatorships; and a regulation of the Department of Housing and Urban Development on public-use databases and public information provided by the Enterprises, at 24 CFR part 81, subpart F.

intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose.

In accordance with FHFA's Review Plan, the 2023 regulatory review process will be conducted by the FHFA Office of General Counsel, which will review all comments received and consult with other FHFA offices and divisions. After that review, a report of findings and recommendations will be provided to the FHFA Director. The report of findings and recommendations will be privileged and confidential. After receiving the report of findings and recommendations, the Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

The 2023 FHFA regulatory review is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against FHFA. FHFA's determination whether to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review is not a final agency action and therefore is not subject to judicial review.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

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